

Letter of Findings Number: 09-0429
Utility Receipts Tax
For Tax Years 2006-2007

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ISSUE

I. Utility Receipts Tax—Imposition.

Authority: IC § 6-2.3-2-1; IC § 6-2.3-3-10; IC § 6-8.1-5-1.

Taxpayer protests the imposition of utility receipts tax on certain receipts.

STATEMENT OF FACTS

Taxpayer operates a water utility in Indiana. After an audit, the Indiana Department of Revenue ("Department") assessed additional Utility Receipts Tax ("URT"), penalties, and interest for the 2006 and 2007 tax years. The Department found that Taxpayer had failed to include certain of its receipts as gross receipts subject to the URT. Taxpayer protested this assessment. An administrative hearing was held, and this Letter of Findings results.

I. Utility Receipts Tax—Imposition.

DISCUSSION

Pursuant to IC § 6-8.1-5-1(c), all tax assessments are presumed to be accurate, and the taxpayer bears the burden of proving that an assessment is incorrect.

The Department determined that Taxpayer had failed to include receipts from connection and disconnection charges as gross receipts subject to the URT.

The URT is imposed by IC § 6-2.3-2-1, as follows:

An income tax, known as the utility receipts tax, is imposed upon the receipt of:

- (1) the entire taxable gross receipts of a taxpayer that is a resident or a domiciliary of Indiana; and
- (2) the taxable gross receipts derived from activities or businesses or any other source within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana.

"Gross receipts" for purposes of the Indiana's URT is defined at IC § 6-2.3-1-4 as follows:

"Gross receipts" refers to anything of value, including cash or other tangible or intangible property that a taxpayer receives in consideration for the retail sale of utility services for consumption before deducting any costs incurred in providing the utility services.

IC § 6-2.3-3-10 provides:

Gross receipts include receipts received for installation, maintenance, repair, equipment, or leasing services provided to a commercial or domestic consumer that are **directly related to the delivery of utility services** to the commercial or domestic consumer or the removal of equipment from a commercial or domestic consumer upon the termination of service. (**Emphasis added**).

Accordingly, the URT is an income tax imposed on the taxable gross receipts of a provider of retail utility services for consumption. Taxable gross receipts include receipts received for providing services that directly pertains to the Taxpayer's delivery of the utility service.

A. "Connection and Disconnection Charges."

Taxpayer asserts that its connection and disconnection service charges are not the type of charges that are subject to the URT. However, these charges are for either the connection of a customer to the lines for delivery of the water or the disconnection of a customer from the lines so that the customer will no longer receive delivery of the water. Therefore, these charges "directly relate to the delivery of utility services." Since these charges relate to the Taxpayer's delivery of the water services to customers, the receipts received from these service charges are subject to the URT.

Therefore, Taxpayer's protest to the imposition of URT on the connection and disconnection charges is respectfully denied.

B. "NSF Charges."

Taxpayer asserts that its "NSF charges" are received from customers that have paid with insufficient funds checks and are not the type of charges that are subject to the URT.

Taxpayer has provided sufficient information to establish that the receipts are from charges to the customers paying with insufficient funds checks and are not receipts received attributable to the provision of water utility services for consumption.

Therefore, Taxpayer's protest to the imposition of URT on the "NSF charges" is sustained.

C. "Lab Testing Charges."

Taxpayer asserts that its "lab testing" charges are received from customers for providing testing of the

customers' water samples—that the customers have taken from their swimming pools, hot tubs, or wells—for harmful bacteria and are not the type of charges that are subject to the URT.

Taxpayer has provided sufficient information to establish that the "lab testing" receipts are not receipts received attributable to the provision of water utility services for consumption.

Therefore, Taxpayer's protest to the imposition of URT on the "lab testing" charges is sustained.

FINDING

In summary, Taxpayer's protest is sustained in part and denied in part. Taxpayer's protest is denied for subpart A, and Taxpayer's protest is sustained for subparts B and C.

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